

THE HON'BLE Ms. JUSTICE G.ROHINI

—

WRIT PETITION No. 3250 of 2006

Dated: 20-04-2006

Between:

Kavuri Padmavathi Devi

..... PETITIONER

AND

Union Bank of India,

Khairatabad Branch,

Rep., by its Chief Manager,

Pavani Plaza, Khairatabad, Hyderabad

and two others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

-

WRIT PETITION No. 3250 of 2006

ORDER:

This writ petition is filed seeking a declaration that the action of the first respondent-Union Bank of India, Khairatabad Branch, in interfering with the petitioner's property i.e. Plot Nos.52 and 53 admeasuring 400 square yards in

Sy.No.145 (part) of Hydernagar village, Balanagar Revenue Mandal, Ranga Reddy District, is arbitrary and illegal.

The facts, in brief, may be narrated as under:

The petitioner claims to be the absolute owner and possessor of the plots in question having purchased the same for valid consideration from one M.P.S.N. Raju and Bhadra Reddy in the year 1990 under a registered sale deed. However, it is stated that the original sale deed was misplaced and therefore she obtained a certified copy of the same in the year 1994. After purchase of the said plots, she along with the owners of the adjacent plots formed into a society, which was registered in the name and style of Sri Sainagar Housing Welfare Society, for developing the plots. The petitioner states that she paid a sum of Rs.27,000/- to the Society towards developmental charges and also obtained electricity connection. It is alleged that on 20-01-2006 some of the officials of the first respondent-Bank visited her residence and alleged that she had deposited original documents pertaining to the plots in question as security to a loan availed by the second respondent-M/s Nikki Media. The petitioner states that she was in no way concerned with the second respondent-M/s Nikki Media and she never deposited the title deeds of the plots in question as security to the loan said to have been availed by the second respondent. It is stated that in spite of her repeated requests and representation by Registered Post, the first respondent did not furnish the particulars of the persons who deposited the documents pertaining to the plots in question as security in connection with the loan availed by the second respondent. On the other hand the officials of the first respondent-Bank trespassed into the plots in question and wrote on the compound wall that the said plots were under mortgage to the Bank. Left with no option, the petitioner lodged a complaint with the Station House Officer, Kukatpally P.S., in pursuance of which, Crime No.123 of 2006 dated 06-02-2006 was registered against the first respondent-Bank. The petitioner alleges that the respondents 1 to 3 in collusion with each other impersonated her and have been interfering with the possession and enjoyment of the plots in question.

I have heard the learned counsel for the petitioner and the learned standing counsel appearing for the first respondent-Bank.

The first respondent-Bank in its counter affidavit denied all the allegations made by the petitioner and explained that the petitioner along with the second respondent approached the Bank and requested for grant of term loan for a sum of Rs.65,00,000/- and cash credit for a sum of Rs.10,00,000/- and on sanction of the said credit facilities, the petitioner along with second respondent executed all the necessary documents in its favour. The petitioner offered the plots in question as security to the loan facilities availed and deposited the original sale document bearing No.12934/99 dated 22-09-1990 by creating collateral security. The petitioner also submitted a letter of guarantee and an affidavit dated 28-07-2005 affirming that she was the absolute owner of the plots in question and creating security for repayment of the loan facilities availed by the second respondent and gave a declaration on a non-judicial stamp paper on 01-08-2005 to that effect. A possession certificate signed by the petitioner dated 29-07-2005 was also submitted to it apart from memorandum of deposit of title deed, certified copy of the registered sale deed, xerox copy of layout plan, property tax receipt, encumbrance certificate, valuation report etc. It is also stated that as a matter of fact, the petitioner herself approached the advocate of the first respondent-Bank for legal opinion and valuation certificate from the Engineer concerned. Thereafter, since the second respondent failed to repay the loan amounts, in spite of repeated demands and notices, the loan was required to be treated as non-performing account and when the first respondent sent notices to the account holder as well as the guarantors to that effect, different stands have been taken by them to avoid the liability. The plea of the petitioner that the original sale document was misplaced in the year 1994 is false and as a matter of fact the same was deposited as security in respect of the loan availed by the second respondent.

Having regard to the above noticed pleadings and the submissions made by the learned counsel for both the parties, the grievance of the petitioner appears to be that the respondents had impersonated her and illegally deposited the title deeds of the plots owned by her with the first respondent-Bank as security in respect of the loan availed by the second respondent. The case of the petitioner is that the plots in question stand in her name and in the title deed the purchaser (the petitioner) was described as Kavuri Padmavathi Devi, W/o K.Krishna Rao. However, the identity card of the guarantor, which forms part of

the loan documents shows that the name of the guarantor was K.Padmavathi, D/o A.Shikamani. It is alleged that all the three respondents were strangers to her and she never had any acquaintance with them.

Thus, it is clear that the entire controversy relates to the identity of the guarantor. Whereas, the petitioner claims that she never deposited the title deeds of the plots in question as security and that she was impersonated, the specific case of the first respondent-Bank is that the petitioner herself deposited the title deeds. In the loan documents placed before this Court by the first respondent-Bank, the guarantor was described as Smt.Kavuri Padmavathi Devi, W/o K.Krishna Rao. However, the residential address of the said guarantor does not tally with the address furnished by the petitioner in this writ petition. It appears that along with the information furnished at the time of granting of loan, the guarantor submitted the identity card affixing a photograph in which the name of the guarantor was shown as K.Padmavathi Devi, D/o A.Shikamani, aged about 39 years as on 01-01-2003.

The allegation made by the petitioner that she was impersonated and that the title deeds of her property were deposited as security to the loan availed by the second respondent by the respondents 1 to 3 in collusion with each other is a highly disputed question of fact, which cannot be enquired into and decided by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. It is also relevant to note that the petitioner had admittedly filed original suit in the Court of the Principal Junior Civil Judge, East and North, Ranga Reddy District against respondent 1 to 3 herein seeking a decree for perpetual injunction restraining them from interfering with the plots in question, however, the said plaint was rejected by the trial Court by order dated 01-02-2006 holding that the first respondent-Bank is governed by the provisions of the Multi State Co-operative Societies Act, 2002 and therefore, no suit can be maintained until expiration of 90 days of notice in writing to the Central Registrar.

The learned counsel for the respondents submits that as per Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 any person aggrieved has to prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter.

In the light of the aforesaid efficacious remedies available under the statute and

having regard to nature of controversy involved, the petitioner cannot maintain this writ petition under Article 226 of the Constitution of India.

Accordingly, the writ petition is disposed of granting liberty to the petitioner to work out the appropriate remedy as available under law for redressal of her grievance. Having regard to the facts and circumstances of the case, it is made clear that the first respondent-Bank shall not take any coercive steps against the petitioner for realization of the loan availed by the second respondent, without following due process of law. No costs.

G.ROHINI, J

Dated: 20-04-2006

KLP